

Hospitality, or Kant's Critique of Cosmopolitanism and Human Rights

On one prominent view of global justice, all humankind is tied by moral bonds to care for a cosmopolitan society spanning the entire globe. Duties of justice to individuals do not end at borders but include positive obligations to secure a potentially expansive list of human rights of persons everywhere, perhaps including care for their material welfare, and this may require international action or intervention when one cannot rely on local governments. On a second, less sanguine view, most of this is nothing but a recipe for permanent war. Because the sole legitimate aim of international politics is avoiding war whenever possible, the only valid *casus belli* is the violation or threatened violation of one state's sovereignty by another. Enforcement of human rights is an internal matter for states, and any peremptory rights of stateless persons or individuals across borders must be limited as narrowly as possible to ensure they could never invite new conflicts by competing with state sovereignty. Above all, any positive claims of justice grounded in membership in a world community, beyond the most minimal injunction against waging war at will on foreigners, must be relegated to the dustbin of history as among the greatest obstacles to lasting peace. In the world we inhabit, such claims can only provide pretexts for powers keen to rationalize self-interested belligerence by dressing it up in the sanctimonious language of philanthropy.

Now Kant's theory of what we may loosely call international politics is often presented as a more or less distinctive version of the first view. But in fact his view was the second, and the first that of thinkers he opposed. Too often Kant is read on the presumption that the major choice in politics is whether to stand on the side of principle, reason, and morality or instead with realist

critics such as Hobbes or Schmitt. But this obscures the originality of Kant's views: in fact he made a point of defending a third alternative, one unshaken by Hobbes' radical critique just because it took that critique explicitly as its own point of departure, but which nevertheless went on to defend a role for principles of justice also beyond state borders as a further part of a solution to the problem of a war of all against all. The stakes in this concern more than Kant interpretation, moreover, because if I am right, then Kant advanced a powerful alternative to an all-too familiar forced choice between moralism and immoralism in international politics.

This article considers one major piece of Kant's solution—his novel category of “cosmopolitan right” [*Weltbürgerrecht*], which he limited to the single right of “hospitality” [*Hospitalität, Wirthbarkeit*]. There is no agreement in the literature on what this right of hospitality entails or how Kant's brief discussions purport to justify it. The key, I will show, is to see that when Kant formulated hospitality as a right “that it not be justified to be met as an enemy” or “not to be treated as an enemy” simply for arriving on foreign shores with offers of trade, he was joining a centuries-long argument in the law of nations over who counts as an “enemy” who may be justly repelled or conquered in war.¹ Contrary to what is almost universally supposed, the point of this for Kant was not to secure a positive right to *anything*, but simply to rule out familiar justifications for declaring others “enemies” and thereby overriding their provisional rights—holding already in the state of nature—to defend themselves and their possessions from attack. A contrary interpretation of the “sacred right of hospitality” had been invoked, famously, by thinkers including Vitoria and Grotius precisely to justify colonial wars in pursuit of commerce, and Kant's reworking drew on Vattel's criticisms of those predecessors on just this point, while regrounding the right, in sharp contrast to Vattel, as a solution to Hobbes' problem of how to escape the state of nature.²

On this view, Kant's theory of right may be summarized as follows. In the state of nature, provisional, "private right" sanctions defense of oneself and one's property, but because interpretation and enforcement are left to individuals a condition of controversy and general war ensues that must be left behind. First this is solved at the domestic level through a sovereign state (ideally with a certain constitution), then at the interstate level by means of a pacific federation. But this still leaves a state of nature among states and non-state peoples, which was a major concern in Kant's eighteenth century, when much of the world was widely held to live outside states and great power politics was closely bound up with wars over extra-European colonies, notably in the French and Indian or Seven Years' War of 1754-63, and again in the American Revolution a few years later. This is what Kant's cosmopolitan right was meant to solve. Rather than resolving conflict through public enforcement, as in the state, Kant opted here for no enforcement at all: his right of hospitality was framed just so that it could never be invoked to start a new war in the name of pursuing one's rights. The rights to freedom and property enjoyed by non-state peoples already in the state of nature will disallow colonial conquest and plunder unless it could be shown that locals had injured foreign traders, thereby rendering themselves "enemies" open to just retaliation. And this is just what Kant's right of hospitality rules out (while also ruling out wars against traders who remain peaceful). In this way, cosmopolitan right provides the third and final layer of a system of public right designed as a comprehensive alternative to a global state of war.

Most interpreters of Kant's cosmopolitan right see in it instead a source of positive obligations independent of the logic of controversy that gives rise to the need for sovereign states, and go on to associate Kant's arguments with expansive projects of institutionalizing cosmopolitan or human rights.³ Some recent work has pushed back by emphasizing Kant's debts

to Hobbes or Rousseau or his call for limiting cross-border rights more narrowly than prior theorists, as part of a critique of colonialist war.⁴ But this has so far left a muddle over the meaning and justification of his right of hospitality. Tuck is one of few to appreciate the full force of Kant's famous criticism of Grotius, Pufendorf, and Vattel as "only sorry comforters" (8:355), but he takes this to imply, against the text, that Kant thought cosmopolitanism as hospitality merely "desirable" rather than "necessary."⁵ I argue, by contrast, that Kant's cosmopolitan right was meant precisely as the final piece of a solution to the problem of right in controversy he took over from Hobbes—but it was none the less for that a genuine principle of public right meant to show why Hobbes' state of nature beyond state borders was not, in fact, inescapable.

Perhaps one reason this has been so difficult for commentators to pin down is that few are similarly comfortable with both Kant's critical philosophical logic and the centuries-long tradition of the law of nations with which he engaged.⁶ The first section of this article thus situates Kant's intervention against the background of divergent eighteenth-century approaches to the law of nations or *ius gentium*. The next deepens this background with a very condensed overview of a few of the most relevant controversies in the longer *ius gentium* tradition reaching back to ancient Rome and through its radical reformulation in the early modern period. The third section explains in detail Kant's right of hospitality and the argument he offered in its favor. In this article I do not try to defend Kant's views or to consider how they might need to be adjusted for today's world. What I mean to show is that his position is different than has widely been supposed. It is a powerful view that has not received the attention it deserves and which still demands a response today.

Kant and the *Ius Gentium* Tradition

There is no doubt that Kant saw his writings on international politics as interventions in long-running debates over the “law of nations” [*ius gentium*, *droit des gens*, *Völkerrecht*]. The *Metaphysics of Morals* gave “*ius gentium*” as a synonym for Kant’s own *Völkerrecht* (6:311), and when Kant lectured on natural law twelve times between 1767 and 1788, he used the fifth edition of Gottfried Achenwall’s *Ius naturae in usum auditorum*, the latter volume comprising “*ius familiae, ius publicum et ius gentium*” (Göttingen, 1763).⁷ The only surviving notes from these lectures, from 1784, end with a section on the “*jus gentium*” where Kant suggested that although “this law has not yet been brought under general principles... the best book to read on it is Vattel’s *Les droits des gens*” in the 1760 German translation by Johann Philipp Schulin—one of the relatively few books in his personal library when he died (27:1392).⁸ Kant famously contrasted his view of international politics to that he attributed indiscriminately to “Grotius, Pufendorf, and Vattel” in *Perpetual Peace* (8:355), although there is no clear evidence he had read the first two. He likely knew Leibniz’s *Codex iuris gentium diplomaticus* (first ed. Hannover, 1693), as he appears to have lifted from it the joke that opens *Perpetual Peace*. And although it is possible that his knowledge of the Roman civil law tradition was second-hand, in a lecture of the early 1770s he described the *Corpus iuris civilis*, the sixth-century CE compilation of Roman law from which the later *ius gentium* tradition derives, as “certainly the greatest and surest evidence of the profundity of human thought” and referred to the apocryphal 1137 rediscovery of the *Digest* at Amalfi as “the best find among books that humankind ever could have made” (24:181).⁹

Kant’s intervention was to bring together in a novel and systematic way certain lines of thought in two competing eighteenth-century approaches to the questions of *ius gentium* and just

war theory. One line had begun with Hobbes' radical insistence that the state of nature was a state of war of all against all, and that the first command of justice was therefore to leave it—"exeundum esse ex statu naturali," in the mantra Kant explicitly attributed to Hobbes and never tired of repeating.¹⁰ Rousseau followed Hobbes in rejecting natural sociability as a ground for law independent of a sovereign will, but he proposed a way out of Hobbes' state of nature among nations by adapting the Abbé St-Pierre's plan for a permanent pan-European society to provide for mutual security.¹¹ Kant followed Rousseau (with some adjustments) in responding to the problem of war by seeking to establish certain relations among sovereign political institutions, rather than by appealing directly to the authority of any freestanding law of nature and nations.

The latter was the approach of the mainstream modern *ius gentium* tradition, from Grotius and Pufendorf in the seventeenth century down to Barbeyrac, Wolff, Burlamaqui, and Vattel, among others, in the eighteenth. I consider Pufendorf the real founder of this philosophical approach to the "law of nature and nations", because he built on Grotius in a specific direction that incorporated a good deal of Hobbes, notably the emphasis on sovereignty, while simultaneously purporting to escape the amoralist implications of Hobbes' own view by repurposing the notion of natural human sociability as a solution to the alleged lack of an agreed principle of justice in the state of nature.¹² Kant very clearly sided with the Hobbes-Rousseau line against the Pufendorf-Vattel line on the central issue of the inadequacy of just war theory appealing directly to universal law, which depended on deriving the obligation to obey that law from the sociability of human nature or the authority of divine command.

But Pufendorf also made another key move, breaking with the line of argument from Vitoria to Grotius that violations of this law of nations constitute "injuries" justifying coercive retribution—paradigmatically in the case of native Americans, whose purported refusal to honor

a *ius gentium* obligation to allow free access to European traders was held to justify colonial conquest. Pufendorf drew a clear distinction under the law of nations between “perfect” duties, pertaining to “justice”, and “imperfect” duties of mere “humanity or love”, and insisted that only violations of the former justify the use of force whereas the latter oblige solely *in foro interno* (3.4.1).¹³ Duties to commerce are imperfect (unless one makes them perfect by consenting to a contract or treaty), and therefore foreigners may never claim a right of commerce or hospitality against us “without our permission and against our will” (3.3.9). This distinction would become canonical through Wolff to Vattel, who rearticulated it as a right to petition for trade but not to demand it: “each nation... will accept or refuse what is proposed to it by foreigners, without them being able to accuse her of injustice, or to demand from her a reason, much less to make use of compulsion” since “the obligation of commerce with other nations is in itself only imperfect.”¹⁴ Thus, Vattel concluded, “When the Spaniard attacked the Americans on the pretext that those peoples refused commerce with him, he [only sought to] cover with a vain color his own insatiable cupidity” (2.2.25).¹⁵ Kant’s right of hospitality makes essentially the same point. The difference is that in the Pufendorf-Vattel line this still depended on the direct authority of a law of nations derived partly from the law of nature and partly from the presumed general agreement of peoples. What Kant saw was that the same principle of hospitality could be reworked, quite to the contrary, as part of a solution to the Hobbesian problem of conflict unleashed by the natural right of each to every thing. That problem had been addressed at other levels by means of states (with Rousseau’s reworking of Hobbes) and the pacific interstate federation (with Rousseau’s reworking of St-Pierre), but had remained unresolved in relations involving non-state peoples.

Kant, then, made four key moves vis-à-vis the mainstream *ius gentium* tradition. He first sided with its fiercest critics in rejecting the attempt to ground a binding universal law of nations in human nature, divine will, or a presumption of general assent. That project had been an effort *post factum* to build a systematic and rational foundation underneath a mishmash of traditional legal precepts accumulated and handed down for centuries around the core of Roman civil law. But Kant rejected as philosophically incoherent any of the sorts of foundations proposed by seventeenth- and eighteenth-century natural lawyers. Whereas the just war tradition in the law of nations proposed rules governing the rightful conduct of war in a state of nature, Kant followed Hobbes and Rousseau in insisting that the first command of justice was to leave that state for a civil one in which problems of controversy and enforcement could be solved through the construction of a sovereign power. This offered itself as a solution to the longstanding problem of how external law can bind, since on the (hypothetical) supposition of an original contract, the rights of the sovereign can be seen as conferred by consent of the governed. But it also appeared to undercut the basis of any law of nations beyond state borders.

Kant then made a second move. He reformulated the object of traditional “*Völkerrecht*” to solving a residual Hobbesian problem left over after the formation of states, since “a state of nature among nations, like a state of nature among human beings, is a condition that one ought to leave in order to enter a lawful condition” (6:350, cf. 8:354). Despite disagreement over how exactly this argument went, it is clear that Kant concluded by endorsing a version of Rousseau’s pacific federation as a solution to the problem of *ius controversum* (or right in controversy) at the interstate level. This effectively redefined *Völkerrecht* in two parts: first, the demand to enter the federation, and second (in the *Doctrine of Right*), those rules for the legitimate conduct of war where no such federation yet obtained. These rules, however, no longer appealed to any

freestanding universal law for distinguishing just from unjust wars in a state of nature. Instead they derived strictly from those logical conditions that must be observed if escaping the state of nature by building a universal pacific federation were to remain possible: an “unjust enemy” was now simply one whose expressed will “reveals a maxim by which, if it were made a universal rule, any condition of peace among nations would be impossible and, instead, a state of nature would be perpetuated” (6:349). Or already in his 1784 lectures: “the *ius gentium* is simply the possibility of a federation of nations” (27:1393). Again this provided a clear answer to why the law should bind, independent of any controversial theory of human nature or divine will. But this answer supported only those elements of the traditional law of nations governing interstate relations, whereas the tradition had covered a much broader range of relations including those with individual foreigners and non-state peoples. Kant’s redefinition of the law of nations with Hobbes and Rousseau thus had the effect, in changing its basis, of paring back its content: henceforth “*Völkerrecht*” properly understood ought to mean nothing but “*ius publicum civitatum*” (the public law of states, 6:343).

This, however, would seem to leave no basis for principles governing relations with non-state peoples. And so Kant made a third move, introducing the novel category of “cosmopolitan right”. The commonplace that this represented a revolutionary extension of right to individuals independent of state membership could hardly be further from the truth.¹⁶ *Ius gentium* applied to individuals already in ancient Rome, and although the suggestion that it specifically concerned interstate relations had gained ground since Francisco Suárez first proposed it in 1612, the *ius gentium* right of commerce or hospitality that Kant retained had become a central element of the law nations with Vitoria and remained so down to Wolff and Vattel.¹⁷ So in coining the new term “*Weltbürgerrecht*”, Kant did not extend the scope of the law of nations at all, he only salvaged a

single very familiar piece of it which otherwise would have been entirely lost with the way he had redefined the traditionally more inclusive term “*Völkerrecht*”. Indeed, Kant insisted most explicitly on “*limiting*” (not extending) cosmopolitan right to that single right of hospitality, by which he can only have meant to rule out appeals to any further *ius gentium* rights—such as familiar ones to aid in necessity or protection from one’s own prince, to pass armies through others’ territory, or particularly to demand freedom of trade—any of which would threaten to reignite the sort of *ius controversum* his entire strategy was designed to escape.

Kant’s fourth and final move was to redefine this right of hospitality, keeping the irenic substance of the version in the line from Pufendorf to Vattel while reframing it no longer as a freestanding positive entitlement in a state of nature, but to the contrary as a condition of the possibility of a lawful state that would leave behind that of the *bellum omnium contra omnes*. In other words, Kant’s aim was not to add new rights, but to reformulate the traditional law of nations strictly on the basis of a demand for peace compatible with the consent of all subject to law, thereby providing an answer to long-running debates over its valid sources and the authority of competing claims to interpret and enforce it. The resulting cosmopolitan right and law of nations *together* added up to a narrower band of rights than the *Völkerrecht* they replaced. And that was much of the point—to rule out any additional rights of the sort routinely used to justify wars.

This is what I mean in saying that Kant offered a “critique”—in his distinctive sense—of cosmopolitanism and human rights, even though he identified his project with both terms. In each case, he insisted on defining the term in a sense narrower than that it replaced, to avoid overstepping the bounds of what in it could actually be proven obligatory. By reflecting on the conditions of possibility of binding external law *per se*, Kant thought one could arrive at a

demand for perpetual peace, and from that for the need first for states, then a pacific federation, and finally the right of hospitality. Everything in the law of nature and nations that could not be justified this way, as a response to the Hobbesian problem of right in controversy, had to be thrown out. But what was left was secured from skepticism toward other sorts of justifications that had to rely on conformity to custom, the benevolence of human nature, or the fear of God. What was radical in Kant's view was that rather than papering over the problem of disagreement over justice he redefined the content of justice itself by reflecting on the logical conditions of any non-question-begging solution to the disagreement. To suggest instead that what distinguished his position was that it gave individuals more rights is both to miss the point of critique, here, for Kant and to get the history the wrong way around.

A Very Brief Overview of the *Ius Gentium* Tradition

Ius gentium was originally a category of Roman law contrasted to the civil law peculiar to Rome because taken to apply to all peoples. One usage, reported in Sallust, Livy, Seneca, and Tacitus, *inter alia*, covered sacred obligations enjoining rules for initiating war, as well as protecting legates and honoring treaties.¹⁸ But another sense, more prominent among jurists, referred to a body of private law developed by the *praetor peregrinus* from 242 BCE, once the Roman republic had incorporated its Italian neighbors. Whereas *ius civile* was restricted to Roman citizens, *ius gentium* was available also to regulate commerce and resolve disputes involving non-citizens, or *peregrini*.¹⁹ The extension of citizenship to all free male Roman subjects in 212 CE deprived the category of its rationale, but the term survived and the relationship among natural law, the law of nations, and civil law remained controversial for centuries. The oldest surviving references to "*ius gentium*" are in Cicero (though see Gellius 6.3.45), who distinguished it from the *ius civile* proper to Rome (*Rep.* 1.2), identifying it both

with unwritten custom (*Part.* §129) and the law of nature (*Tusc.* 1.13, *Off.* 3.23), proper, according to Stoics, to a universal society of all with all (*Off.* 3.69).

The most important definitions are found in the *Corpus iuris civilis*, compiled in the sixth century CE under the Emperor Justinian, which became the standard text of Roman law by the twelfth century and set the terms for subsequent debates. But despite the project's avowed synthetic aims, its cited authorities did not agree. Gaius closely identified *ius gentium* with natural law accessible to reason: "The law which a people constitutes for itself is particular to its polity and is called *ius civile*... but that which natural reason constitutes among all human beings is equally observed by all and is called *ius gentium*, as that law used by all nations [*gentes*]" (D. 1.1.9 = Gaius 1.1.1). Ulpian instead took the two for contraries: "Natural law is what nature teaches all animals, for this law [impelling procreation and the upbringing of young] is not peculiar to the human race" whereas the law of nations is "common only to human beings among themselves" (D. 1.1.1.3-4). And the *Institutes*, following Hermogenian (D. 1.1.5), contrasted the origin of the law of nations in historical human acts to the eternal law of nature:

The law of nations is common to the entire human race, for nations established certain laws for themselves as occasion and human necessities required. For wars arose, and captivities and slavery followed, which are contrary to the law of nature (since by the law of nature all men are originally born free). Also, from this law nearly all contracts were introduced, such as of purchase and sale, leasing and hiring, partnership, deposits, loans redeemable in kind, and innumerable others (1.2).

There was more agreement on the content of *ius gentium* than on its definition: it was generally accepted that it governed war, property, contracts, and particularly slavery.²⁰

Two things ought to strike a modern reader. First is that in Rome much of the law of nations was private law applying directly to individuals. Although it covered laws of war and embassies, among its central institutions were also property, commerce, and slavery. No Roman jurist distinguished *ius gentium* from other law because it applied to states rather than to

individuals; the point was rather that unlike *ius civile* it applied not only to Roman citizens but to everyone, and disagreements over its relation to natural law turned on explaining how that might be so. The second point is that *ius gentium* was one of several sorts of law internal to the Roman legal system, developed and applied by Roman institutions. The various stories told about its sources were attempts to rationalize this system from inside, to minimize ambiguities and contradictions in inherited law with the practical aim of resolving disputes among persons subject to Roman power—they were not attempts to shore up the authority of Roman power in the first place. One presumed a right to rule over a pre-existing political community in accordance with law and asked how that law should be interpreted. One worried about resolving conflicts of jurisdiction internal to that complex community, but not with justifying the authority of the law in general or the power to enforce it up to or beyond any sort of external territorial bound. This point is essential, because the survival of the *Corpus iuris* and its revival from the end of the eleventh century meant that down through the late medieval period these assumptions would outlive the actual Roman political institutions within which they had originally made sense. It was only in the early modern period, particularly after the discovery of the Americas, that they fell into crisis and the entire framework linking natural law, the law of nations, and civil law would be rethought on radically new foundations.

In the medieval period, the Roman law of the *Corpus iuris* was variously overlaid with both Christian doctrine and Aristotelian philosophy, the latter taken to document precepts of right reason, and further developed by glossators in the two parallel traditions of canon and civil law. Law developed for use in ancient Roman institutions was adapted to the needs of very different institutions that had emerged in their wake, including princes bound by ties of fealty and the two putatively universal societies of the Holy Roman Empire and the Church. But

despite differences, for instance, between the thoroughgoing rationalism of Aquinas and the qualified conventionalism of the leading fourteenth-century jurist Bartolus of Sassoferrato, both continued to presume the universal authority of an inherited law of nations built syncretically on the *Corpus iuris*. Characteristically, when Bartolus famously argued for the *de facto* independence of Italian city-states from the jurisdiction of the Holy Roman Empire, he made his case not by contesting the universal authority of a common Roman law, but by citing that law's own precepts on how *imperium* might be lost.²¹

This shared framework fell into crisis in the early modern period as the discovery of the Americas, the rise of a skeptical humanism first in the Italian city-states, and then the Reformation conspired to undercut the authority of universal Church and Empire. The tradition had understood itself as the living law of a real and universal community under a continuous authority that had been transferred from the ancient Byzantine Empire to the Holy Roman via the Pope.²² As this assumption collapsed in the early modern period, the Roman law, including the law of nations, was left hanging in the air.

For the first time, the central, if only sometimes explicit, question for natural lawyers became how to have universal law without universal empire. This forced the issue of the authority basis of the inherited Roman law, and particularly of its parts claiming universal status as laws of nature and nations. The Americas drove the point home: not only did they raise the question of what spiritual authority a Christian Pope might claim over non-Christians, they raised an even thornier parallel question concerning what jurisdiction Roman law might have over peoples who had never been ruled by Rome and of whose very existence the Romans had been utterly unaware. In the first phase of a response in the sixteenth and early seventeenth centuries, authors of the second scholastic, beginning with Cajetan and Vitoria, flatly rejected claims to

world dominion by Emperor and Pope and creatively reworked specific arguments from within the Thomist tradition to make up the difference.²³ Notably, it was only at this time that *ius gentium* was first systematically distinguished, by Suárez in 1612, from *ius naturale* and *civile* as that species of law applying specifically to states or nations in their external relations, rather than to the individuals inside them.

In a second phase, a strand of thought I call “humanist radicals”²⁴—preeminently Gentili, Grotius, and Hobbes—proposed various ways of excising the Thomism and Aristotelianism of the scholastic synthesis and supplanting it with a new framework that might stand on its own without the need of support from theology or the continuous authority of a historical legal community. As Gentili put it in 1598 in *De iure belli libri tres*: “the law written in the books of Justinian is not merely that of the *civitas* [*i.e.* Rome], but also that of nations and of nature; and it is so adapted to universal nature, that if the Empire were destroyed and the law itself long buried, it would still rise and diffuse itself among all the nations of mankind” (1.3.26).

But disagreements soon surfaced, raising a second issue. Medieval commentators could be syncretic because so long as membership in a continuous community under law was presupposed, diverse sources of evidence and modes of reasoning could be presumed to complement each other as alternate routes for arriving at the same, underlying truth about what that law said. But when this assumption broke down and theorists began repurposing different sorts of arguments and evidence to establish the authority of law in the first place, it eventually became clear that conclusions might diverge. Scripture might not line up with philosophical reason, or the history of usage with either.

A third phase of response to the crisis began when the post-scholastic radicals divided into three broad camps over the course of the seventeenth century. In the last section we

encountered the first, rationalist (and decidedly Protestant) line that ran from Pufendorf to Vattel. Grotius and Hobbes had attempted to reconstruct the law of nature or nations on a rational basis broadly *more geometrico*. But each also kept one foot in a humanist culture they shared with Gentili, freely mixing logical argument with rhetorical appeals.²⁵ Pufendorf retrospectively claimed Grotius's mantle by emphasizing his ambition to logical system and purporting to carry it further, and by the eighteenth century Barbeyrac, Burlamaqui, Wolff, Vattel and their followers had made good on Pufendorf's ambition to establish a philosophically grounded school in "the law of nature and nations" to supplant the scholastic tradition, claiming Grotius as its founder.²⁶ This approach claimed to underwrite the authority of *ius gentium* by closely tying it to natural law, and that of natural law by purporting to derive it systematically from a small number of principles of human nature (typically natural drives to self-preservation, society and the perfection of the rational faculties). Treaties and custom provided additional sources of the law of nations within the constraints of natural law. But authors disagreed sharply over a fourth category of the "voluntary law of nations" coined by Grotius to describe positive law sanctioned by the will of "all or most" nations.²⁷ Pufendorf and Barbeyrac called this a chimera, whereas Wolff reinterpreted it as derived from the will of a global "*civitas maxima*" to which all nations were bound by nature to submit, concluding that since it was impossible for all nations actually to assemble, right reason must derive the "voluntary" law from the purpose of the association itself, taken for what the will of all nations would be bound to agree.²⁸ Vattel rejected Wolff's fiction of submission to a global common will, grounding the "voluntary" law in a natural "society of nations" premised to the contrary on reciprocal respect for the independent judgment of sovereign states.²⁹ All these authors hoped to save the *ius gentium* from the collapse of the Roman law by grounding it in a rationally reconstructed law of nature, but their running

disagreement over the relation of this “law of nature and nations” to positive law reflected the gap opened up between law and politics without the mediating institutions of universal Church and Empire.

A second line of thought, more directly pitched to diplomatic practice, took the simpler tack of collapsing *ius gentium* entirely into the positive law of compact and custom. This turned attention to compiling treaties and chronicling historical events as evidence of sovereigns assenting to general rules of conduct. Leibniz, interestingly, was the pioneer in this, and by the late eighteenth century, a consensus came to predominate in this school that the law of nations once supposed universal held in fact only among the nations of Europe, which were united by certain shared customs (notably having rejected slavery as the outcome of wars amongst Christians).³⁰ Distinctions between the rationalist and positivist camps were often muddy, however, because many eighteenth-century accounts freely combined natural law and positive sources without worrying overmuch about their philosophical relations.³¹

We have also already encountered the third major line of thought in the period, that running from Hobbes to Rousseau. Instead of presuming the authority of universal law and arguing over its sources and methods of interpretation, this tack began with the political question of legitimate legislative authority. In the international case, Rousseau reworked St-Pierre’s plan for perpetual peace, in Hobbes’ language, as a solution to the problem of how to escape the state of nature among states. How had it taken so long, Rousseau asked, to see “that each of us being in a civil state with our fellow citizens and in a state of nature with all the rest of the world, we have only prevented wars among individuals to kindle from them general wars, which are a thousand times more terrible” and which might be prevented only by a “form of confederative government that, uniting Peoples by ties similar to those that unite individuals, submit equally

one and the other to the authority of the Laws”?³² Otherwise, as he wrote in an unpublished manuscript, “as for what one calls the law of nations, it is certain that, without a sanction, its laws are only chimeras still more feeble than the law of nature.”³³ Kant followed Rousseau closely in all this, citing St-Pierre’s and Rousseau’s plans at 8:24 and 8:313, and adding that every state ought to be republican. But he also went a step further by annexing a new category of cosmopolitan right to solve a third Hobbesian problem concerning the state of nature remaining, even with a federation, among states and non-state actors, refiguring the sort of right to “make offers” (*anbieten*) of commerce found in Vattel no longer as an imperfect duty in some freestanding law of international society but as a distinctive solution to the problem of *ius controversum* and the conflict it invites. Unsurprisingly, Kant showed no interest in the conventionalist line of thought associated with Leibniz (apart from the jokes).

The long history of the *ius gentium* illustrates three key points, then, for understanding Kant. First, the point of his *ius cosmopoliticum* was not to extend new rights to individuals or non-state peoples, but to reinterpret familiar rights on a new basis. Second, in this he joined a debate that had opened in the early modern period over how to reconstruct the authority of law, both inside and outside states, once claims to universal jurisdiction of Church and Empire had broken down. And third, in this debate the exact definition of the law of nations, and its relation to both natural and civil law, became increasingly tied to competing claims about the sources of law and sorts of argumentative strategies to justify it. The key is to see that, because Kant’s intervention needed to succeed simultaneously on all these levels, any viable interpretation of his right of hospitality must fit into a textually plausible account of his larger strategy for systematically re-establishing the claim of both domestic and international law to bind, in the absence of any lord or all the world.

Kant's Right of Hospitality

Kant's right of hospitality, then, was not new, but a reformulation of a central *ius gentium* right in debates over colonial wars running from Vitoria to Vattel. Vitoria and Grotius, *inter alia*, had argued that when non-state peoples reject trade with Europeans, they violate a sacred right of hospitality, committing an injury (*iniuria*) or harm (*laesio*) that entitles Europeans to vindicate their right by force. This had licensed plunder and conquest, since according to the tradition, one has the right to seize enemies' lands and to reduce enemies to the status of subjects or even slaves, insofar as needed to compensate an injury or secure against future threats.³⁴ Others, including Vattel, redefined hospitality explicitly to rule out this sort of aggression.³⁵ Kant's version followed Vattel in this, but for Kant it also served as the final piece of a response to Hobbes' demand to seek peace as the condition of justice—as a way of defining an alternative to the state of nature, even where there were no states. Stopping wars with non-state peoples was important for its own sake, but also because they threatened the possibility of durable peace among European powers, and so also the rights of every citizen of states, which are ultimately only as secure as the international order (8:360, 6:311, 6:353). Kant's argument was less elliptical in his drafts for *Perpetual Peace* than in the published texts. There he set the problem in the Latin terms elsewhere attributed uniquely to Hobbes: “*exeundum esse e statu naturali*” (23:157), and he explained how cosmopolitan right completes a solution by removing justifications for war both abroad and back in Europe:

The principles of the supposed justice of acquiring newly discovered lands, taken for barbaric or unbelieving, as ownerless goods without the authorization of the inhabitants and even by subjugating them, are every one absolutely contrary to cosmopolitan rights limited to mere hospitality; and because Europe is the part of the world that sets itself wholly into mutual commerce... the spark of an injury to human right having fallen even in another part of the world, because of the flammability of the material of imperiousness in human nature, and above all in its leaders, the flame of war easily spreads to the region from which it received its source. (23:174-5)

The key is to see that Kant defined hospitality not as a right to demand *anything*—which might be used to justify retaliation if the demand were refused—but instead as a right that certain acts not be considered acts of war, that traders might arrive on foreign shores with offers of commerce “without it therefore being justified to meet them as an enemy” [*ohne das der Auswärtige ihm darum als einem Feind zu begegnen berechtigt wäre*] (6:352, cf. 8:358). This is a very strange way to phrase this right if it is meant as a positive claim to welfare for refugees or to unimpeded communication or to anything else, but it makes perfect sense if the point is to stake out a position on the just grounds for war. This is even clearer when one compares the similar language of Schulin’s *Vattel*, which frames the argument expressly as one of just war theory.³⁶ It also explains why the bulk of Kant’s discussion of cosmopolitan right focused on colonial wars (rather than other issues, perhaps with more obvious contemporary relevance, frequently emphasized in the literature).

Kant’s right of hospitality can respond to the problem of right in controversy because, since it is only a right not to be met with war in response to certain acts, it follows that any violation of the right is *already war*, and therefore that no alleged violation could ever be used to justify the outbreak of a war not already underway. Kant was not concerned with determining whose cause in an ongoing war is “just,” but to the contrary with escaping the state of nature by ruling out punitive wars of every sort—deriving principles of *ius ad bellum*, *in bello* and *post bellum* strictly from the conditions of the general and permanent peace prerequisite to peremptory justice (6:346-9). What Kant needed was a principle that would describe a condition in which right need not be pursued through war, because it provides another way of resolving conflicts that arise in the state of nature over whether the arrival of foreign traders represents a trespass against the property rights of non-state peoples and hence whether or not the traders may

forcibly be turned away. In another case, one would solve this by forcing the people without a state to join one, but here Kant ruled this out because the right to coerce others into a civil condition derives from the hindrance they pose to one's own freedom only where interaction is necessary, whereas in this case the traders have voluntarily created the potential for conflict by showing up uninvited, and could remove it by leaving (6:266, 6:353). So here public enforcement is impossible, and private enforcement is just what leads to conflict in the state of nature. The remaining possibility is no enforcement at all, and that is why a right like Kant's hospitality, carefully framed so as never to furnish a brief for initiating war in the name of enforcing one's rights, can count as a second-order principle of public law, functionally analogous to the state and the pacific federation in providing a solution to the problem of controversy over first-order private right.

It will be supposed that leaving the state of nature requires enforcement rather than non-enforcement, but this cannot be Kant's view. Consider that the parallel institution in *Völkerrecht*, the voluntary federation of free states, is also explicitly unenforceable (8:356, 6:344, 6:351). States may fail to join up, or subsequently to respect arbitration or fulfill their duties of mutual defense. But Kant insists (at least by his final and most systematic political works of the 1790s) that the federation must be voluntary, force being reserved for defense against external powers who remain in a state of nature with respect to it. The point of ideas like this for Kant is *practical* or *regulative*: they are meant to provide a standard for judging present action because any act that contradicts them in principle can never be defended as just.³⁷ No such idea secures its own empirical enforcement or resolves disputes over its own interpretation. (Indeed, this is true even of the idea of a republican constitution, which is meant to guide action but must not be imposed by violent revolution.) What it does is provide a principle which, if honored, describes a

condition of peace in which controversy over right no longer gives rise to war. One way of doing that is through a sovereign state, but it is not the only way. The three levels of public right simply lay out three different ways of solving Hobbes' problem, not all of which Hobbes himself had accepted. Kant adapted the second way from Rousseau, and the third, I have suggested, from Vattel.

This interpretation resolves key textual puzzles. First, it explains Kant's insistence on *limiting* cosmopolitan right to hospitality alone. Even commentators who have noticed this have trouble explaining why Kant's argument should require it. But my view makes this clear: any additional right—at least any positive right not phrased in the same careful way as Kant's own—would reintroduce the controversy over justice characteristic of the state of nature that cosmopolitan right is designed to escape. Second, my account explains why Kant nowhere considers how cosmopolitan right might be enforced, a point that has puzzled interpreters and which is particularly striking because Kant's central argument in both *Staatsrecht* and *Völkerrecht* turned on just this problem, which he chided Grotius, Pufendorf, and Vattel for ignoring. It cannot be, as is sometimes suggested, that either states or the pacific federation were meant to enforce cosmopolitan right, since states recreate an international state of nature whenever they try to enforce justice beyond their borders; and the federation is explicitly only voluntary and defensive, so clearly lacking any public authority over non-members. Kant's silence on the issue only makes sense if cosmopolitan right was designed, as I have argued, never to need enforcing.

Against all this will be cited the famous passages at 6:352 and 8:358 where Kant appears to suggest that the right to hospitality derives directly from original common ownership of the earth. But this was a commonplace in the tradition, which Kant made a point of reworking on a

new basis as merely hypothetical (6:251, 6:262). Crucially, in the *Metaphysics of Morals* original common ownership was introduced first in *private right*, from which Kant drew the emphatic and unorthodox conclusion that the unilateral original acquisition it explains gives rise to controversy and hence the need to leave the state of nature (6:256-67). But that means it cannot possibly be the same ownership right that returns in the final stage of public right, this time as a direct and independent foundation for hospitality, because that could only reintroduce the controversy, whereas what is needed is a solution to it (as in the state and federation). For Vitoria, by contrast, original common ownership had been a historical fact before a universally authoritative will divided property after the flood; for Vattel the earth was given by God to all for their subsistence, but was later justifiably divided because growing population meant that only more efficient private cultivation could continue to satisfy that purpose—and for both this division left in place a residual right of commerce or hospitality.³⁸ The debate Kant was engaging was over whether or not that right justified war. We have seen that Vitoria and Vattel disagreed, and the key to understanding the role of original common ownership for Kant is to see how and why he used it to support an answer different from either of theirs.

Others will object citing Kant's suggestion in *Perpetual Peace* that cosmopolitan right follows from the "*spirit of commerce*". But this is not part of its justification, only a (characteristically Kantian) subsidiary argument meant to show that justice does not demand the impossible by contravening nature, and is not therefore chimerical (8:368, cf. 6:354-5). That is why this appears in the section on "the guarantee of perpetual peace" and needn't reappear in the *Doctrine of Right*.

Compare my account, finally, to others in the recent literature. Ripstein has sought to ground hospitality in Kant's suggestion that all individuals have a right "to be wherever nature or

chance (apart from their will) has placed them” (6:262), but as Niesen points out, this cannot explain most of Kant’s cases, which involve traders precisely “when neither nature nor chance but just [their] own will” has brought them into contact with another people (6:266).³⁹ Ripstein also argues that outsiders must treat ostensibly non-state peoples “as if” already in a rightful condition (a state), even though they may not be.⁴⁰ But as Stilz notes, this fits neither Kant’s text nor the logic of his argument, which already precludes forcible assimilation wherever interaction is merely facultative and, one might add, includes contract and property rights already in the state of nature.⁴¹ Kleingeld accepts Ripstein’s first ground and adds a second in the innate individual right to the freedom to communicate one’s thoughts.⁴² But even together these cannot explain what distinguishes cosmopolitan right as public from the private rights of individuals already in the state of nature. And Kleingeld concedes that Ripstein’s first ground appears to conflict with Kant’s account of property rights. Stilz helpfully explains how provisional rights of first possession in the state of nature constrain interactions with non-state peoples, but she does not distinguish this from cosmopolitan right and hospitality, which for Kant are part not of private right but of the second-order public right overlaid on it to escape the controversy to which private right gives rise.⁴³ Niesen, drawing on Flikschuh, has argued that cosmopolitan right derives from obligations we take on in unilaterally appropriating part of the earth, since such acts exclude others and thus are held to require transition to a cosmopolitan condition in which they might be retroactively sanctioned (or historical injustices made good) by a global omnilateral will.⁴⁴ But that is Kant’s argument for the state, not for cosmopolitan right, which for Kant requires not a global state (as that argument would suggest), but hospitality in relations with peoples remaining outside any state at all. Indeed, Kant insists on the disanalogy by claiming that one may not force non-state peoples into states if interaction with them is facultative rather than

necessary. Muthu, like Niesen, rightly emphasizes Kant's rejection of colonialism in cosmopolitan right, but he grounds this in human sociability, whereas I have argued this was Vattel's position that Kant rejected, for reasons he took from Hobbes.⁴⁵ Despite their differences, these interpretations all presume that cosmopolitan right needs a positive and independent ground. None considers the alternative for which I have argued—that it might be justified instead because it provides the third and final piece of a solution to the problem of right in controversy. And yet this must be the correct reading, because positive grounds are just what generate controversy in the state of nature, whereas public right is supposed to leave behind that “state devoid of justice” by resolving the controversy and bringing peace.

Conclusion

If I am correct, then Kant's argument for a single cosmopolitan right of hospitality follows from a critique of a familiar sort of direct appeal to human rights or laws of reason that ignores the core political problem of authority in legislation, interpretation and enforcement. But that does not mean that beyond state borders reigns only war and never justice. To the contrary, Kant offers a sophisticated defense of a very narrow interpretation of cosmopolitan right, one that is not vulnerable to the skeptical attacks that bedevil more familiar views just because it insists, like Hobbes, on solving the skeptical problem on that problem's own terms. Kant's right of hospitality introduces a novel sort of right designed just so as never to be enforceable, to fill space that might otherwise be occupied by positive rights inviting controversy and strife, in contexts where the option of enforcement is off the table. His position thus asks us to consider whether sometimes pursuing global justice may require not more rights and duties beyond borders but fewer. And he makes a powerful and provocative case that peace can only serve justice if justice is first willing to serve peace.

¹ The *Doctrine of Right* defines cosmopolitan right as the right “sich zum *Verkehr* untereinander anzubieten... ohne das der Auswärtige ihm darum als einem Feind zu begegnen berechtigt wäre” (emphasis original, 6:352); *Perpetual Peace* as “das Recht eines Fremdlings, seiner Ankunft auf dem Boden eines andern wegen von diesem nicht feindselig behandelt zu werden”, and again “so lange er aber auf seinem Platz friedlich verhält, ihm nicht feindlich begegnen” (8:358, cf. drafts, 23:172, 23:173). Note “begegnen” and the contrast between “friedlich” and “feindlich”. All Kant citations from *Kants gesammelte Schriften* (Berlin: De Gruyter, 1902–).

² See Francisco Vitoria, *De Indis*, q3.a1, in *Political Writings* (Cambridge: CUP, 1991); Hugo Grotius, *Commentary on the Law of Prize and Booty* (Indianapolis: Liberty Fund, 2006), 304 (this chapter published as *Mare liberum* in 1609); Emmer de Vattel, *Les droits des gens*, (Oxford: Clarendon, 1916 [1757]), 2.2.25, cf. 2.1.7.

³ See notably Jürgen Habermas, “Does the Constitutionalization of International Law Still Have a Chance?” in Habermas, *The Divided West* (Cambridge, MA: Polity, 2006), 115-210; Seyla Benhabib, *The Rights of Others* (Cambridge: CUP, 2004), 25-48; Elisabeth Ellis, *Kant’s Politics* (New Haven: Yale, 2005); Peter Niesen, “Colonialism and Hospitality,” *Politics and Ethics Review* 3 (2007): 90-108; Garrett Wallace Brown, *Grounding Cosmopolitanism* (Edinburgh: Edinburgh University, 2009); Pauline Kleingeld, *Kant and Cosmopolitanism* (Cambridge: CUP, 2012), 72-91; Andreas Føllesdal and Reidar Maliks, eds., *Kantian Theory and Human Rights* (New York: Routledge, 2013).

⁴ Richard Tuck, *The Rights of War and Peace* (Oxford: OUP, 1999); Arthur Ripstein, *Force and Freedom* (Cambridge, MA: Harvard, 2009); Anna Stilz, *Liberal Loyalty* (Princeton: Princeton University, 2009); Timothy Waligore, “Cosmopolitan Right, Indigenous Peoples, and the Risks of Cultural Interaction,” *Public Reason* 1 (2009): 27-56; Katrin Flikschuh, “Kant’s Sovereignty

Dilemma,” *Journal of Political Philosophy* 18 (2010): 469-493; Lea Ypi, *Global Justice and Avant-Garde Political Agency* (Oxford: OUP, 2011), 11-34; Oliver Eberl and Peter Niesen’s edition of Kant’s *Zum ewigen Frieden, Kommentar* (Berlin: Suhrkamp, 2011); Howard Williams, *Kant and the End of War* (Basingstoke: Palgrave Macmillan, 2012); Katrin Flikschuh and Lea Ypi, eds., *Kant and Colonialism* (Oxford: OUP, 2014).

⁵ Tuck, *Rights*, 220-1, cf. 8:360.

⁶ Works emphasizing historical background include Tuck, *Rights*; Ian Hunter, *Rival Enlightenments* (Cambridge: CUP, 2001); Georg Cavallar, *The Right of Strangers* (Aldershot: Ashgate, 2002), and *Imperfect Cosmopolis* (Cardiff: University of Wales, 2011); Anthony Pagden, *The Burdens of Empire, 1539 to the Present* (Cambridge: CUP, 2015). Kleingeld, *Kant’s Cosmopolitanism*; Sankar Muthu, *Enlightenment against Empire* (Princeton: Princeton University, 2003); and Reidar Maliks, *Kant’s Politics in Context* (Oxford: OUP, 2014), helpfully treat more proximate contexts.

⁷ Emil Arnoldt, *Gesammelte Schriften*, ed. Otto Schöndorffer, 6 vols. (Berlin: Cassirer, 1909), 5:213-337.

⁸ Arthur Warda, *Immanuel Kants Bücher* (Berlin: Breslauer, 1922). Kant also owned Burlamaqui’s *Principes du droit naturel* (Geneva, 1747).

⁹ Kant’s Latin when citing Ulpian’s three precepts of justice in the *Metaphysics of Morals* appears to follow not the *Digest* but Baumgarten’s textbook from which Kant regularly lectured. Cf. 6:237, D. 1.1.10.1 and Alexander Baumgarten, *Initia philosophiae practicae primae acroamaticae* (Halle, 1760), 2.3.93-94.

¹⁰ “This is what, among all scholars of natural law only Hobbes assumes as the highest principle of the civil state: *exeundum esse ex statu naturali*” (27:590). Cf. Hobbes, *De Cive*: “ut mutuo

metu è tali statu exeundum... (1.13). See also Kant, 6:97, 19:243, 19:503, 19:600, 23:157, 27:1383, and 27:1337, where he suggested only Hobbes and Rousseau “have some idea of this.”

¹¹ St-Pierre, *Projet pour rendre la paix perpétuelle en Europe*, 2 vols. (Utrecht, 1713); Rousseau, *Extrait du projet de paix perpétuelle de Monsieur l'Abbé de Saint-Pierre*, and *Jugement sur la paix perpétuelle*, in *Œuvres complètes*, vol. 3 (Paris: Gallimard, 1964).

¹² Pufendorf, *De jure naturae et gentium* (Oxford: Clarendon, 1924 [1672]), 1.4.6, 2.3.15.

¹³ Cf. Kant's similar distinction of right from virtue or philanthropy from the 1790s. Grotius had also distinguished between perfect and imperfect duties but Pufendorf applied the categories in a new and consequential way, in the period after the signing of the 1648 Westphalian peace.

¹⁴ Vattel, *Droits*, 2.2.25. Schulin's German reads: “Sie [jeder Nation] wird daher denjenigen, welchen ihr Fremde anbieten, annehmen oder verwerfen können, ohne daß sie von diesen einer Ungerechtigkeit beschuldigt, oder um die Ursachen gefragt, noch viel weniger aber mit Gewalt darzu gezwungen werden kann.” Cf. Kant 6:352, noting “anzubieten” and “berechtigt”.

¹⁵ However, Vattel also accepted a familiar argument justifying occupation of American lands left uncultivated (1.7.81, 1.19.209), which Kant made a point of rejecting (6:265, 6:353)—though cf. Kant's reasoning to Vattel's at 2.8.97.

¹⁶ E.g., Habermas, “Constitutionalization”: “The core innovation of [Kant's] idea consists in the transformation of international law as a law of *states* into cosmopolitan law as a law of *individuals*” (124, emphases original).

¹⁷ Suárez, *De legibus ac Deo legislatore* (Coimbra, 1612), 2.19.8.

¹⁸ Max Kaser, *Ius Gentium* (Köln: Böhlau, 1993).

¹⁹ See Kaser, *Ius Gentium*; Franz Wieacker, *Römische Rechtsgeschichte*, vol. I (Munich: Beck, 1988), 443-9.

²⁰ It also prohibited incest (23.2.68, 48.5.38) and protected embassies (50.7.17) and contract rights of those stripped of citizenship (48.19.17, 48.22.15).

²¹ See *Bartolus super prima parte Codicis* (e.g. Lyon, 1505), C. 2.3.28, and discussion in Magnus Ryan, “Bartolus of Sassoferato and Free Cities,” *Transactions of the Royal Historical Society* 10 (2000): 65-89.

²² In 1440 the Italian humanist Lorenzo Valla’s *De falso credita et ementita donazione Constantini* debunked the so-called *translatio imperii* by demonstrating that the “Donation of Constantine” on which it depended was a forgery, though the work was only printed in 1506.

²³ See Cajetan’s commentary on Aquinas’s *Secunda Secundae* (Lyon, 1567): “And if pagans are discovered, who never were subject to the Roman Empire, living in lands the name of Christianity never reached... Against them no King, no Emperor, nor the Roman Church can make war to occupy their lands or to subjugate them in temporal affairs” (q66.a8). Vitoria and Grotius cite the passage. See also Soto, *De iustitia et iure*, 2nd ed. (Salamanca, 1556), Book 4, q4.a2. On competing responses to this challenge see Annabel Brett, *Changes of State* (Princeton: Princeton University, 2011).

²⁴ I use the term “humanist” in the sense of Tuck, *Rights*.

²⁵ Cf. the emulation of mathematics in Grotius’ earlier, unpublished *Commentary* and the litany of authorities superimposed in his 1625 *De iure belli ac pacis* (Oxford: Clarendon, 1913). For discussion see Benjamin Straumann, *Roman Law in the State of Nature* (Cambridge: CUP, 2015).

²⁶ See Pufendorf’s historical manifesto, “De origine et progressu disciplinae juris naturalis,” in his *Eris Scandica* (Frankfurt, 1686), and Jean Barbeyrac’s prefaces to his French editions of

Pufendorf's *Le droit de nature et des gens*, 2 vols. (Amsterdam, 1706), and Grotius's *Le droit de la guerre et de la paix*, 2 vols. (Amsterdam, 1724).

²⁷ Grotius, *De iure belli*, 1.1.14, except for the neologism closely following Vázquez de Menchaca, *Controversarium illustrium* (Frankfurt, 1572), 2.54.4.

²⁸ Pufendorf, *De jure*, 2.3.23; Barbeyrac, *Droits*, 1.1.14; Wolff, *Jus gentium methodo scientifica pertractatum* (Oxford: Clarendon, 1934 [1749]), §7-22.

²⁹ Vattel, *Droits*, §11-23.

³⁰ See Leibniz, *Codex juris gentium diplomaticus* (Hannover, 1693); Mably, *Le droit public de l'Europe, fondé sur les traités conclus jusqu'en l'année 1740*, 2 vols. (Geneva, 1746); Robert Ward, *An Enquiry into the Foundation and History of the Laws of Nations in Europe*, 2 vols. (London, 1795); Friedrich von Martens, *Précis du droit des gens moderne de l'Europe fondé sur les traités et l'usage*, 2 vols. (Göttingen, 1789); James Mackintosh, *A Discourse on the Study of the Law of Nature and Nations* (London, 1799).

³¹ For instance, Bynkershoek's *Quaestionum juris publici* (Leiden, 1737) held that although the law of nations was grounded in reason, "where reason is ambiguous, being often on both sides," one must estimate *ius gentium* from usage, and so "recent examples and pacts" show the law of nations to change with changing customs (*Ad lectorem* f.5).

³² Rousseau, *Projet*, 564. Anarchy was the historical result of the breakup of the Roman Empire, the putative authority of its laws having "long outlived its power" (567, n).

³³ Rousseau, *Œuvres*, 3:610.

³⁴ See, e.g., Vitoria, "On the Law of War," q3, in *Political Writings*; Vattel, *Droits*, 3.9. Contrast Kant's repudiation of "punitive war" at 6:347.

³⁵ Vattel, *Droits*, 2.2.25, 2.1.7.

³⁶ See note 14. Note also Kant's allusions to China and Japan and cf. Vattel, *Droits*, 1.8.94, 2.7.94, 2.8.100. China, but not Japan, had earlier been cited by Gentili, Pufendorf, and Wolff.

³⁷ On this sort of argument elsewhere in Kant's moral and political theory, see my *The Struggle for Democracy: Paradoxes of Progress and the Politics of Change* (Oxford: OUP, 2015), chapters three and four.

³⁸ Vitoria, *De Indis*, q2.a1 and q3.a1; Vattel, *Droits*, 1.18.203 and 2.2.21.

³⁹ Ripstein, *Force*, 295-8. Niesen, "Colonialism," 101-2.

⁴⁰ Ripstein, "Kant's Juridical Theory of Colonialism," in Flikschuh and Ypi, *Kant and Colonialism*, 149.

⁴¹ Stilz, "Provisional Right and Non-State Peoples," in Flikschuh and Ypi, 206.

⁴² Klingeld, *Kant and Cosmopolitanism*, 84-5.

⁴³ Stilz, "Provisional Right," 197-220.

⁴⁴ Niesen, "Colonialism"; Eberl and Niesen, *Kommentar*, 262-5. Cf. Flikschuh, *Kant and Modern Political Philosophy* (Cambridge: CUP, 2000), 141-3, and Cavallar, *Strangers*, 363-7.

⁴⁵ Sankar Muthu, "Productive Resistance in Kant's Political Thought", in Flikschuh and Ypi, 85-7. Cf. Vattel, *Droits*, 2.1.2.